



**THE ATTORNEY GENERAL  
OF TEXAS**

November 21, 1990

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Scott Warren Johnson  
Reeves County Attorney  
Reeves County Courthouse  
P. O. Box 749  
Pecos, Texas 79772

LO-90-94

Dear Mr. Johnson:

You inform us that, pursuant to section 351.102 of the Local Government Code, Reeves County entered into a professional management agreement with a corporation to manage the Reeves County Law Enforcement Center. Section 3.10 of the agreement provides that the employees of the facility are part of the "management team" supplied by the corporation and that the county will reimburse the management corporation for "costs associated with these employees." The corporation offers a stock ownership plan to its employees as part of their compensation.

We understand you to ask two questions. First, you wish to know whether, under terms of the contract, the employees legally are county employees or employees of the management corporation. Second, you wish to know whether the county will violate section 52 of article III of the Texas Constitution if it reimburses the corporation for the money the latter contributes to the stock option plan on behalf of employees. Specifically, you wish to know whether the county, by reimbursing the corporation for such expenses, will become a stockholder of that corporation in violation of section 52 of article III of the Texas Constitution.

First, we conclude that, by the express terms of the contract, the employees about whom you ask are employees of the management corporation. Second, we conclude that if the county reimburses the corporation for its contribution on behalf of its employees to the corporation's stock ownership plan, the county would not thereby become a stockholder in that corporation; therefore, we answer your second question in the negative.

Section 351.102 of the Local Government Code provides the following in pertinent part:

The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility.

Pursuant to this section, Reeves County entered into a contract with a private corporation that provided that the employees of the facility are part of the corporation's "management team." Section 3.10 of the agreement provides:

Employee Expenses. The employees of the LEC [Law Enforcement Center] are part of the management team supplied by [the corporation] for management of the facility. The County shall reimburse [the corporation] for the costs associated with these employees. These costs shall be submitted to the County according to the procedures set out in Section 3.06 and shall be reimbursed by the County according to the same procedures provided therein.

By the clear terms of the agreement, then, the employees of the facility are employees of the corporation, not of the county.

Subsection (a) of section 52 of article III of the Texas Constitution provides in pertinent part:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or "thing" of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. (Emphasis added.)

A brief submitted on behalf of the corporation characterizes the plan in the following way:

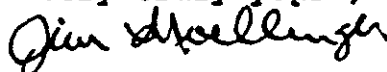
[The corporation's] employee benefit plan includes an Employee Stock Ownership Plan ("ESOP"). This plan is part of the employees' compensation package whereby [corporation] employees receive a stake in the corporation as a retirement benefit.

[The corporation] makes contributions on behalf of its employees to an independent trust company. An independent trustee purchases [corporation] stock on the open market for the beneficial ownership of the employees. The employees also have an option to contribute additional amounts into the ESOP and [the corporation] will match additional funds voluntarily contributed by such employees.

An employee's interest in the [corporation] ESOP vests after five years and any stock held on behalf of an employee may then be repurchased by [the corporation] at the current market value if the employee leaves the company. The shareholder interest in the corporation belongs to the individual employees of [the corporation], not to [the corporation] and certainly not to Reeves County.

Reeves County receives no ownership interest in the stock purchased; none of the normal incidents of stock ownership accrue to the county. By reimbursing the corporation for those "costs associated with these employees," including the corporation's contribution to the employees' stock ownership plan, it cannot fairly be said that the county thereby becomes a stockholder itself in the corporation. We therefore answer your second question in the negative.

Very truly yours,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

APPROVED: Rick Gilpin, Chairman  
Opinion Committee

Sarah Woelk, Chief  
Letter Opinion Section

RG/SW/JM/mc

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